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PATENTS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Joel Lesser

Examiner: T. Vu

Serial No.: 09/605,127

Group Art Unit: 2142

Filed June 28, 2000

For: SEMI-AUTOMATED LINKING AND HOSTING  
METHOD

**REPLY BRIEF ON APPEAL**

Commissioner of Patents and Trademarks  
Arlington, Virginia 22313-1450

Sir:

Further to the Examiner's Answer of October 22, 2004, ("Answer") enclosed are three copies of the applicant's Reply Brief On Appeal.

**I. RESPONSE TO EXAMINER'S RESPONSE TO ARGUMENT**

**A. Anticipation Rejections of Claims Under Horstmann**

It is observed that the response to argument provided by the Examiner is not actually a response to the argument provided in the Appeal Brief. The Examiner's argument addresses very few of the specific arguments provided in the Appeal Brief filed by the applicant. The response to argument section provides a reiteration and/or a new rejection with an element-by-element analysis of the claims. By comparing the rationale of the Final Office Action to the "Response to Argument" the Board of Patent Interferences and Appeals will observe that the citations to specific locations in the Horstmann reference have changed at least as it relates to some of the elements for each of the rejections. Accordingly, it is not a repetition of the 102(e)

rejection “set forth in a prior action mailed on 2/29/04” as alleged in the grounds of rejection provided in the Examiner’s Answer. This is not believed to be proper except in the form of an Office Action, but the applicant will address what appears to be new grounds for rejections based on the Horstmann reference.

### **B. Claim 1**

Claim 1 is provided below.

1. (Amended 8/4/03) A method of verifying reciprocal linking of a first link between an account Owner’s link page and a Webmaster’s site and a second link from the Webmaster’s site to the account Owner’s site using a database including first link information having a link address for a location at the Webmaster’s site, the database maintained by an administrator, the method comprising:
  - (a) retrieving first link information from the database; then
  - (b) determining whether the first link information corresponds to an existing resource at the Webmaster’s site by accessing the Webmaster’s site using the first link information retrieved from the database; then
  - (c) spidering through the Webmaster’s site beginning at the link address; and
  - (d) verifying through the spidering step that a second link information is present at the Webmaster’s site with said second link information corresponding to the second link from the Webmaster’s site to the Owner’s site.

The first element requires: “(a) retrieving first link information from the database; then”.

The Examiner cites Column 10, lines 60-64 which state: “the method of claim 1, wherein (a),(b),(c) and (d) are performed by a server coupled to a network, and wherein the first link information received in (b) is received by the server from the network” and step 34 of Figure 3 which states “UPDATE BOOKSTORE DATABASE AND OUTPUT NEW PAGE 4 WITH

NEW LINK (4<sup>TH</sup> LINK INFO) TO BIKE SHOP – PAGE D.” The Examiner states that he is interpreting the first step as: “(a) retrieving first link information from the database website.” (Additional language provided by Examiner). By mischaracterizing the first step, the Examiner is attempting to make the claim fit the reference rather than interpreting the claim on the reference. This is believed to be improper.

There is nothing in Column 10, line 60-64 or step 34 in Figure 3 which teaches or suggests retrieving first link information from a database. A database may be updated in Step 34 of Figure 3, but there is no teaching for the retrieval of first link information from a database as claimed for link verification. As explained in the applicant’s Response dated August 4, 2003, “while it is true the Horstmann reference provides for verifying that page B includes the third link information, this is apparently done directly from the soliciting of information from the second entity as is taught in Column 10, lines 48-51 and not a database.” It is believed that it is the use of the applicant’s specification, and not the Horstmann reference that gives rise to this element.

As it relates to step (b), once again there is no teaching of the use of a database to store link information. The reference in Horstmann relates to the storage of new webpages on a server, not information in a database, as claimed. (See Horstmann, column 4, lines 7-11). Once again, it is only with hindsight and the use of the applicant’s disclosure that the rejection is formulated.

As explained in all the applicant’s responses, steps (c) and (d) are simply not taught or suggested by Horstmann. Spidering is a term well known in the art which includes the limited definition provided by the Examiner, amongst others, but is most widely known as the ability to

download pages linked together at a website (normally, all the pages linked together at a website).

The Examiner initially acknowledged the limitations was not present in Horstmann (see May 2003 Office Action). In fact, Horstmann teaches against such a method. Column 3, lines 27-42 explicitly provides that if the link back 5 does not exist (on page B), then the verification software removes link 6. Through the use of the applicant's spidering step, if a particular page does not include the link back, but a different page found by the spider method includes the link back, then verification has occurred. This same set of events would result in the removal of the link in the Horstmann reference (i.e., no verification).

Accordingly, as provided by MPEP § 2145 Paragraph (X)(D), since the reference teaches away from the claimed invention and therefore along with MPEP § 2141.02, an improper obviousness rejection has been formed. The fact that an anticipation rejection as opposed to an obviousness rejection has been sustained is believed to be improper since the Examiner himself has admitted in the First Office Action that spidering does not occur in the Horstmann reference and now relies on a second reference for a "spider" definition which is not taught or suggested in Horstmann.

In spite of the new citations within Horstmann provided in the Response to Arguments, the applicant believes that the rationale provided by the applicant in the Appeal Brief is persuasive and allowance of claims 1-5 is respectfully requested.

### **C. CLAIMS 5-10**

Claims 5-10 relate to a method of presenting a request for a reciprocal link to a website the account owner for approval and then providing the link upon approval on the account owner's website.

What the Examiner fails to recognize and admit is that Horstmann teaches the addition of links by the Webmaster without approval of the account owner. The step of requiring approval prior to the creation link is explicitly required by the claim language of claims 5-10. The applicant has made numerous arguments in this regard and the Examiner correctly acknowledged that in the First Office Action (“Horstmann did not detail (c) and present said queue to the account owner for approval”) since the creation of the link was performed automatically.

In Horstmann the account owner can later go back and delete a created link, but he is not given the opportunity to accept or deny the link before its creation. In the business or political world, irreparable damage could already be done. Suppose a link to an inappropriate adult site is provided on the account owner. If the account owner is a politician facing an impending election and the existence of the site draws the attention of the media before it was withdrawn, the candidate’s aspirations could be dashed by the Horstmann system. Accordingly, there are a number of business objectives and others as to why the applicant believes there is a need for the claimed method provided by the applicant which is not taught or suggested by the Horstmann.

Although the Examiner points out a number of citations within the Horstmann reference, the Examiner never acknowledges the “automatic” methodology of Horstmann and the difference between that and the claimed method. Additionally, by confusing which entity the “bookstore owner” and the “bike shop owner” represent as it relates to these claims, the Examiner misinterprets the Horstmann reference. It is important to remember that if any analogy is to be made between the Horstmann reference and the applicant’s claims, the bike shop is the equivalent of the Webmaster while the account owner is the equivalent of the bookstore owner. The Examiner notes that the “bike shop owner” is the one that approves the queue (Step c) as it relates to Horstmann. This is the wrong entity as provided by the claim since it is the account

owner (which should have been the bookstore owner if a proper rejection were possible) that is the one which receives the queue for approval in step (c). The bike shop owner as observed by the Examiner was the entity which is solicited for link information in step (a). Accordingly, Examiner has inappropriately or inadvertently switched horses throughout the argument forcing the claim to fit the reference.

If the claim is consistently applied to the teachings of Horstmann and the entities are not confused through the analysis, the Board will find claims 5-10 are allowable since the bikestore owner is the entity solicited, but is not the entity which is provided with the queue for approval (i.e., it is the bookstore owner).

#### **D. Claims 11-15**

The Examiner continues to equate a “links page” to a “formula.” In fact, the term “or links page” is substituted for the applicant’s choice of the word “formula” in the argument. The applicant believes that substitution of “links page” for “formula” is an attempt to force the Horstmann reference to fit the modified claim language. This is believed to be improper.

Claim 11 as amended August 4, 2002, requires a formula independent of changes made by a human operator to create a second order of links from an initially displayed first order of links and then display the second order of links. A common term utilized by the applicant to describe this feature is auto-rotation of links. By auto-rotating links, those links that may normally be buried such as links which would not normally show up on a first page of a long list of links may be brought closer to the front at times through auto rotation. The claim language provides this feature.

The Examiner relies on “non-editable” and “edit link” pages to attempt to provide this auto-rotation feature. This is believed to be improper. Even after referencing the cited lines of


the Horstmann reference, the applicant remains confused as to the Examiner's logic and cannot follow it. For support, the Examiner relies on a citation from Horstmann that links can be reformatted or redisplayed under appropriate headings. While it is true that Horstmann shows the display of links under headings, it does not teach auto-rotation of the links which is the claimed step since it occurs independent of human action and relies on a formula. In the portion of Horstmann cited by the Examiner the user must select the heading to be displayed under thereby requiring operator action which is outside of the claim limitation. Accordingly, claims 11-15 are believed to be similarly allowable and such action is respectfully requested.

## II. CONCLUSION

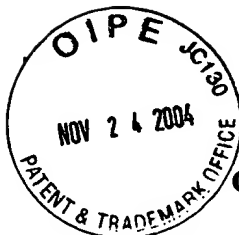
The applicant appreciates the Board's review of the fifteen claims pending in this application. Allowance of the claims 1-15 is believed to be proper and such action is respectfully requested.

Respectfully submitted,

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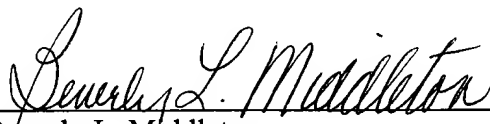


## CERTIFICATE OF MAILING

I hereby certify that the preceding Reply Brief on Appeal is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

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On this 22 day of November, 2004.

  
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Beverly L. Middleton